



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: TECOM, Inc.

File: B-236929.2

Date: May 11, 1990

Ronald H. Uscher, Esq., Dempsey, Bastianelli, Brown & Touhey, for the protester.
Joel S. Rubinstein, Esq., Sadur, Pelland & Rubinstein, for Northeast Construction Co., an interested party.
David La Croix, Esq., and Vasio Gianulias, Esq., Office of the General Counsel, Department of the Navy, for the agency.
Guy R. Petrovito, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

The protester's deletion of one subline item in its low bid on a sealed-bid procurement should be waived as a minor informality where the deleted bid requirement was not material or an essential or integral part of the overall contract work and where the waiver of the requirement would not affect the relative competitive standing of the bidders.

DECISION

TECOM, Inc., protests the rejection of its bid and award of a contract to Northeast Construction Co., under invitation for bids (IFB) No. N62467-89-B-0350, issued by the Department of the Navy for the renovation and repair of family housing at Shaw Air Force Base, Sumter, South Carolina. TECOM contends that the Navy erred in rejecting TECOM's low bid as nonresponsive and that the awardee's bid is itself nonresponsive.

We sustain the protest since TECOM's bid is responsive.

The IFB as originally issued contained a bidding schedule that required bidders to submit a base bid, line item No. 0001, to renovate and repair 124 family housing units and 6 officers quarters in accordance with project plans, specifications, and contract documents. Bidders were also required to submit unit prices and a total price under line item No. 0002, for 20 subitems of indefinite quantity work

C48512 / 141369

of varying estimated maximum quantities, and a total price for an additive item No. 0003 to build fences and posts around trash pads as shown on the project plans.

The Navy subsequently issued six amendments to the IFB. Amendment No. 3 expressly deleted subitem "AS" of line item No. 0002, indefinite quantity work, to install a maximum estimated quantity of 250 downspouts. Amendment No. 5 replaced the original additive bid item No. 0003 with a new additive item, which required bidders to submit a total price to remove existing fences and build fences and posts as shown on the plans. Amendment No. 6 added a new additive bid item No. 0004, for a residential range top extinguishing system, and required bidders to use an attached revised bid schedule in submitting their bid. The revised bid schedule again contained subitem AS of line item No. 0002 for downspouts and the original language of additive item No. 0003.^{1/}

The Navy received eight bids. TECOM submitted the low bid of \$2,992,118, and Northeast was second low at \$3,249,319. The Navy's bid estimate was \$4,314,300.

TECOM acknowledged all six amendments and, as instructed by amendment No. 6, submitted its bid on the revised bid schedule. TECOM, however, crossed out subitem AS for the downspouts with the notation "see amendment #0003" and altered the language of additive item No. 0003 to conform to the revised language added by amendment No. 5. The Navy rejected TECOM's bid as nonresponsive because TECOM had taken exception to the IFB requirements for the downspouts and additive item No. 0003.

^{1/} The contracting officer states that the agency did not intend to reinstate the downspout requirement or the original language of additive bid item No. 0003. In this regard, the drawing clearly shows the deletion of downspouts from the plans. On the other hand, in response to our inquiry concerning the agency's need for the downspouts, the agency submitted the affidavit of the Chief of Engineering and Environmental Planning at Shaw Air Force Base, who states that the agency had and will have a continuing need for downspouts.

The Navy awarded a \$3,171,484 contract to Northeast on January 9, 1990.^{2/} TECOM protested on January 18.^{3/} Contract performance has been suspended pending our decision on the protest. 31 U.S.C. § 3553(d) (1988); 4 C.F.R. § 21.4(b) (1989).

In its report, the Navy now concedes that TECOM's bid was responsive with regard to additive item No. 3. The Navy, however, contends that TECOM's bid must still be rejected as nonresponsive because of TECOM's deletion of the bid requirement for installation of the downspouts. In this regard, the Navy contends that the affirmative deletion of a contract requirement, as opposed to mere omission of a bid price, cannot be waived as immaterial.

To be considered for award, a bid must offer unequivocally to comply with all of the IFB's material terms at the offered price. Federal Acquisition Regulation (FAR) § 14.301(a) (FAC 84-53); Main Elec. Ltd., B-224026, Nov. 3, 1986, 86-2 CPD ¶ 511. However, a contracting officer should waive a defect in a bid as a minor informality if the defect is immaterial and if waiver will not be prejudicial to other bidders. Leslie & Elliott Co., 64 Comp. Gen. 279 (1985), 85-1 CPD ¶ 212. A defect is immaterial if the effect on price, quantity, quality, or delivery is negligible when contrasted with the total cost or scope of the services being acquired. FAR § 14.405. In this regard, the omission of a bid price may be waived where the item for which the price is omitted (1) is divisible from the

^{2/} The Navy did not obligate funds for item No. 0002, the schedule of indefinite quantity work, at the time of contract award. The \$77,835 difference between Northeast's bid price and the contract award amount reflects the price bid by Northeast for item No. 0002.

^{3/} On September 14, 1989, Northeast protested to our Office (B-236929) that TECOM's bid was not responsive. We dismissed Northeast's protest on September 28 as premature after the Navy informed us that they had not yet made a decision regarding the responsiveness of TECOM's bid.

solicitation's overall requirements,^{4/} (2) is de minimis as to the total cost, and (3) would not affect the competitive standing of bidders. Leslie & Elliott Co., 64 Comp. Gen. 279, supra; Custom Envtl. Serv., Inc., B-234774, May 24, 1989, 89-1 CPD ¶ 501.

Here, we conclude from our review of the record that TECOM's deletion of the downspout requirement from the revised bid schedule was an immaterial defect which would not require the rejection of its low bid. In this regard, the government's estimate for this subline item is \$15,000. This represents only 0.5 percent of TECOM's total bid price of \$2,992,118. Northeast's bid was \$3,249,319, of which \$250 was for the downspouts.^{5/} We find that the cost to install the downspouts is de minimis in comparison to the costs of the overall contract requirements. Furthermore, since TECOM's bid is \$257,201 lower than Northeast's bid, and the downspout subitem represents, at most \$15,000 based on the government estimate, or only 5.8 percent of the difference between TECOM's and Northeast's bid, the waiver of the failure to offer the downspouts will not adversely affect the relative competitive standing of the bidders.

Moreover, we find no requirement that the installation of the downspout be performed as a part of the overall contract requirements. The IFB sought, as the basic bid, the general repair and renovation of family housing. The installation of the downspouts was 1 of 20 subline items of indefinite quantity work, which included such items as replacement of light switch cover plates, garbage disposals, and bathroom light fixtures. The IFB provided that the government was not obligated to order any of the indefinite quantity work. Thus, the installation of the downspouts is not an essential or integral part of the overall contract performance, such that the quality of the contract performance would be effected. See Leslie & Elliott, 64 Comp. Gen. 279, supra.

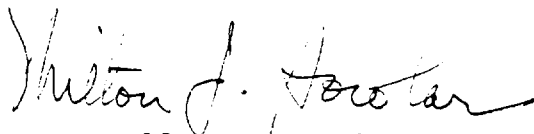
^{4/} If an item is divisible, this indicates that it may have a negligible impact on the quality of the job contract work. See Leslie & Elliott Co., 64 Comp. Gen. 279, supra.

^{5/} The determination of the impact of the cost of an omitted bid item is based on the government estimate, if possible. Custom Envtl. Serv., Inc., B-234774, supra. However, using Northeast's \$250 bid price for the installation of the downspouts, the evaluated price to install the downspouts represents only 0.008 percent of TECOM's total bid price.

Further, we do not agree with the Navy that TECOM intended to take exception to the solicitation requirements. Rather, the record shows that TECOM believed that it was promising to comply with all of the material terms of the IFB, as amended. In this regard, the record indicates that the inclusion of the downspout line item in the IFB was inadvertent. See footnote No. 1, *infra*. While the Navy in its post-conference comments has provided an affidavit from an engineer which states there is a continuing need for the downspouts, this affidavit provides no explanation as to why this line item was deleted from the IFB in amendment No. 3 and does not refute the contracting officer's statement that the inclusion of this line item in amendment No. 6 was inadvertent or explain why the drawings show the deletion of the downspouts. Thus, while amendment No. 6 unequivocally included the downspout line item, TECOM's confusion on this point was understandable, given amendment No. 3's express deletion of this requirement.

Under the circumstances, the Navy should waive TECOM's bid defect as a minor informality since the defect is de minimis and divisible, and since the waiver would not be prejudicial to other bidders.

Accordingly, we sustain the protest. We recommend that the Navy terminate Northeast's contract for the convenience of the government and make award to TECOM, if otherwise proper. TECOM is entitled to recover its costs of filing and pursuing the protest, including reasonable attorneys' fees. 4 C.F.R. § 21.6(d). TECOM should submit its claim for its costs directly to the agency. 4 C.F.R. § 21.6(e).



~~ASAC~~ Comptroller General
of the United States